

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BIBEKANAND SATPATHY, d/b/a AMADORE
ENTERTAINMENT,

Plaintiff,

v.

CATHAY PACIFIC AIRWAYS, LTD.;
COVENANT AVIATION SECURITY, LLC;
TRANSPORTATION SECURITY
ADMINISTRATION; CITY AND COUNTY OF
SAN FRANCISCO; THAI AIRWAYS
INTERNATIONAL, LTD. and DOES 1 to 50,

Defendants.

No. C 04-5334 CW

ORDER DENYING
DEFENDANTS'
MOTION FOR FINAL
JUDGMENT

Defendants Cathay Pacific Airways, LTD. (Cathay Pacific) and Thai International Airways International, LTD. (Thai Airways) have filed a motion for entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b). Collectively, Cathay Pacific and Thai Airways are referred to as Moving Defendants. Plaintiff Bibekanand Satpathy did not file an opposition. This matter was submitted on the papers. Having considered all of the papers, the Court DENIES Moving Defendants' motion for entry of final judgment.

BACKGROUND

Plaintiff originally filed a civil complaint in the Superior Court of the State of California against multiple defendants alleging damage to baggage containing motion picture film. The case was subsequently removed to federal court on December 16, 2004. On February 10, 2005, Plaintiff voluntarily dismissed his claims against Defendant Transportation Security Administration (TSA), and on March 25, 2005, Plaintiff voluntarily dismissed his claims against Defendant City and County of San Francisco (San Francisco).

On September 9, 2005, the Court granted a motion for summary judgment submitted by Moving Defendants, finding that the rights and liabilities of those parties are governed exclusively by the Warsaw Convention, 49 U.S.C. § 40104, and Plaintiff's claims were barred for failure to give timely notice. Defendant Covenant Aviation Security, LLC (Covenant) did not join the motion.

The Court ordered Covenant and Plaintiff to show cause why the case should not be remanded to State court. Covenant answered in opposition to remand. On October 14, 2005, the Court decided that the parties were diverse and declined to remand the case.

LEGAL STANDARD

Under Rule 54(b), the Court may enter final judgment on one or more claims "upon an express determination that there is no just reason for delay . . ." Fed. R. Civ. P. 54(b). Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1 (1980) articulates a two step test for determining when there is no just reason for delay. First, the Court must determine if the judgment is a final

1 judgment. Curtiss-Wright, 446 U.S. at 7. Second, the Court must
2 determine whether there is any just reason for delay. Id. at 8.
3 The analysis of a just reason for delay examines first whether the
4 claims under review are separable from those remaining to be
5 adjudicated and, second, whether there is a likelihood that an
6 appellate court would have to decide the same issues more than
7 once. Gregorian v. Izvestia, 871 F.2d 1515, 1518-20 (9th Cir.
8 1989).

9 DISCUSSION

10 Moving Defendants contend that there is no just reason for
11 delay of a final judgment in their favor. They explain that they
12 have been granted summary judgment resolving all of Plaintiff's
13 claims against them under the Warsaw Convention. In addition,
14 Moving Defendants argue that, because Covenant and Plaintiff will
15 not be governed by the Warsaw Convention or by federal law, the
16 issues of liability for them are severable from those of Covenant.

17 The Ninth Circuit has described the standard for entering
18 judgment under Rule 54(b) as follows:

19 Judgments under Rule 54(b) must be reserved for the
20 unusual case in which the costs and risks of multiplying
21 the number of proceedings and of overcrowding the
22 appellate docket are outbalanced by pressing needs of the
23 litigants for an early and separate judgment as to some
24 claims or parties. The trial court should not direct
25 entry of judgment under Rule 54(b) unless it has made
26 specific findings setting forth the reasons for its
27 order. Those findings should include a determination
28 whether, upon any review of the judgment entered under
the rule, the appellate court will be required to address
legal or factual issues that are similar to those
contained in the claims still pending before the trial
court. A similarity of legal or factual issues will
weigh heavily against entry of judgment under the rule,
and in such cases a Rule 54(b) order will be proper only
where necessary to avoid a harsh and unjust result,

1 documented by further and specific findings.

2 Morrison-Knudsen Co. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981)
3 (internal citations omitted).

4 Moving Defendants correctly observe that summary judgment
5 resolved all of Plaintiff's claims against them under the Warsaw
6 Convention. Because Covenant did not join Moving Defendants'
7 summary judgment motion, however, the Court has not reached the
8 issue of whether Plaintiff's claims against Covenant are governed
9 by State law, preempted by the Warsaw Convention or controlled by
10 other federal law. Accordingly, the possibility remains that
11 Plaintiff's claims against Covenant will proceed under the Warsaw
12 Convention invoking similar legal issues as the resolved claims
13 against Moving Defendants. Thus, entering final judgment in favor
14 of Moving Defendants at this time potentially would burden the
15 Ninth Circuit should duplicative appeals raising the same legal
16 issues be taken.

17 Significantly, even if the claims against Covenant are
18 severable legally from the claims against Moving Defendants, the
19 factual basis for both claims is the same. Thus, a piecemeal
20 appeal to the Ninth Circuit involving similar factual issues would
21 not serve the interests of judicial economy. See Wood v. GCC BEND,
22 LLC, 422 F.3d 873, 20-21 (9th Cir. 2005) (court found that Rule
23 54(b) request was improperly granted where the facts on all claims
24 and issues overlap).

25 Finally, Moving Defendants have not presented any pressing
26 needs for early and separate judgment to outbalance the concern for
27 efficient, sound judicial administration. See Archer, 655 F.2d at
28

1 965. Therefore, the Court denies Moving Defendants' 54(b) motion.

2 CONCLUSION

3 For the foregoing reasons, the Court DENIES Moving Defendants'
4 motion for entry of final judgment.

5 IT IS SO ORDERED.

6 Dated: 10/31/05



CLAUDIA WILKEN
United States District Judge